

**§ 930.162 Exemptions.**

(a) *General.* Tart cherries which are used for the purpose of new product development, for new market development, for development of export markets, for experimental purposes, for export to countries other than Canada, and Mexico, or which are donated to charitable organizations may be granted an exemption by the Board and will be exempt from §§ 930.41, 930.44, 930.51, 930.53, and §§ 930.55 through 930.57, subject to the following terms and conditions. Tart cherry juice and juice concentrate products are not eligible for exempt use/diversion credit in domestic markets. Only tart cherry juice and juice concentrate products for export can receive exempt use/diversion credit. Any information received of a confidential and/or proprietary nature included in this application will be protected from disclosure pursuant to § 930.73 of the order.

(b) *Definitions.* The terms in paragraph (a) of this section shall have the following meaning:

(1) *New product development.* The development of new tart cherry products or of foods or other products in which tart cherries or tart cherry products are incorporated which are not presently being produced on a commercial basis. New product development can also include the production or processing of a tart cherry product using a technique not presently being utilized commercially in the tart cherry industry. Once total industry utilization for a new product exceeds 2 percent of the five year average production of tart cherries, the product shall no longer be considered under development and not eligible for a new product development exemption.

(2) *New market development.* The development of markets for tart cherry products which are not commercially established markets and which are not competitive with commercial outlets presently utilized by the tart cherry industry (including the development of new export markets). A new market becomes commercially established, when total industry utilization in the market exceeds 2 percent of the five year average production of tart cherries.

(3) *Development of export markets.* The sale of cherries or cherry products, in-

cluding the development of sales for new or different tart cherry products or the expansion of sales for existing tart cherry products, to countries other than Canada, and Mexico.

(4) *Experimental purposes.* The use of cherries or cherry products in preliminary and/or developmental activities intended to result in new products, new applications and/or new markets for tart cherry products. Any exemption for experimental work shall be limited in scope, duration and volume based on information supplied by the applicant at the time a request for exemption is made. In no case shall an individual exemption for experimental purposes last longer than five years or exceed 100,000 pounds raw product equivalent of tart cherries.

(c) *Obtaining approval for exempt uses.* In order to receive exemptions for cherries or cherry products utilized for exempt purposes, handlers must apply to the Board for a new exemption or for renewal of an existing exemption by November 1 for the next succeeding year, except for the 1997 year only, handlers may apply through February 5, 1998. A handler shall have one crop year to dispose of cherries or cherry products to exempt outlets approved by the Board, unless granted a renewal. Handlers applying to the Board for a new exemption or for renewal of an existing exemption are subject to the following conditions:

(1) When applying to the Board for an exemption for new product development, handlers must detail the nature of their new product, how it differs from current, existing products and the anticipated short and long term sales volume for the exemption. It will be the Board staff's responsibility to analyze and investigate any request and upon completion of that analysis authorize or deny the exemption.

(2) When applying to the Board for an exemption for new market development, handlers must detail the nature of their new market, how it differs from current, existing markets and the anticipated short and long term sales volume for the exemption. It will be the Board staff's responsibility to analyze and investigate any request and upon completion of that analysis authorize or deny the exemption.

(3) When applying to the Board for an exemption for the development of export markets for tart cherries or cherry products (including juice and juice concentrate) in countries other than Canada and Mexico, including the expansion of sales in existing export markets, handlers must detail the nature of their product, specify whether such product differs from current products being sold in export markets, and estimate the anticipated short and long term sales volumes for the requested exemption.

(4) When applying to the Board for an exemption for experimental purposes, handlers must indicate the preliminary and/or developmental experimental activity. Such experimental purposes should be intended to result in new products, new applications and/or new markets for existing tart cherry products. Any exemption for experimental work shall be limited in scope, duration and volume which the proposing party shall specify at the time a request for exemption is made. In no case shall an exemption for experimental purposes last longer than five years or exceed 100,000 pounds raw product equivalent per handler of tart cherries during the duration of the experiment.

(d) *Review of applications.* A Board appointed subcommittee of three persons which shall include the manager (or a Board member acting in the Manager's stead), the public member and one industry person who is not on the Board, shall review applications for exemption or renewal of exemption and either approve or deny the exemption. Any denial of an application for exemption or renewal of an existing exemption shall be served on the applicant by certified mail and shall state the reasons for the denial. Within 10 days after the receipt of a denial, the applicant may file an appeal, in writing, with the Deputy Administrator, Fruit and Vegetable Programs, supported by any arguments and evidence the applicant may wish to offer as to why the application for exemption or renewal of exemption should have been approved. The Deputy Administrator upon consideration of such appeal will take such action as deemed appropriate with respect to the application for exemption or renewal of exemption.

(e) *Progress report.* Each handler that is granted an exemption must submit to the Board an annual progress report, due May 1 of each crop year. The progress report shall include the results of the exemption activity (comparison of intended activity with actual activity) for the year in its entirety, the volume of exempted fruit, an analysis of the success of the exemption program, and such other information as the Board may request.

(f) *Diversion credit; failure to meet terms and conditions of exemption.* Handler diversion certificates for exempt uses shall be issued to handlers provided that terms and conditions applicable to exempt uses are satisfied. Diversion certificates will not be issued to handlers for any volume of tart cherry products for which such terms and conditions are not satisfied and such cherries would be subject to all of the terms and conditions of §§ 930.41, 930.44, 930.51, 930.53, and §§ 930.55 through 930.57.

(g) *Failure to meet terms and conditions for exemption.* Upon termination of an exemption, any volume of tart cherry products that were granted an exemption but were not utilized for the authorized exempt purpose would be subject to all of the terms and conditions of §§ 930.41, 930.44, 930.51, 930.53, and §§ 930.55 through 930.57.

[63 FR 405, Jan. 6, 1998, as amended at 65 FR 35267, June 2, 2000; 66 FR 39413, July 31, 2001]

#### **§ 930.163 Deferment of restricted obligation.**

A handler may obtain a surety bond on restricted percentage cherries to be posted to temporarily defer the date that inventory reserves must be held. The surety bond must be posted at two times the market value of the quantity of cherries for which the holding obligation is being deferred. The Board can temporarily defer the date inventory reserve cherries must be held to any date requested by the handler. However, this date shall not be later than 60 days prior to the end of the crop year. The deferment shall be conditioned on the execution and delivery by the handler to the Board of a written undertaking within 30 days after the Secretary announces the final restricted percentage under § 930.51. The